



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY – BUNBURY OUTER RING ROAD SOUTHERN SECTION (EPA REPORT 1714)

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 100(1)(d) of the *Environmental Protection Act 1986* in objection to the above report and recommendations. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellants:	170 appellants (listed in the Appeals Convenor's report)
Proponent:	Commissioner of Main Roads Western Australia
Proposal description:	Construction of the Bunbury Outer Ring Road Southern Section
Minister's Decision:	The Minister allowed the appeals in part
Date of Decision:	2 May 2022

REASONS FOR MINISTER'S DECISION

Background

The reservation for the Bunbury Outer Ring Road (BORR) was identified in the Greater Bunbury Region Scheme in November 2007 and is also reflected in current local government planning documents.

A proposal to construct the BORR Northern and Central Sections was approved in 2020 with the issuing of Ministerial Statement 1155. This proposal to construct the BORR Southern Section was referred to the EPA in September 2019, and involves the clearing of 71.5 hectares (ha) of native vegetation within a 200 ha development envelope for road construction.

In October 2021 the EPA published Report 1714 (including recommendations) in relation to a proposal to construct the BORR Southern Section. The EPA identified four key environmental factors as relevant to its assessment: terrestrial fauna, flora and vegetation, inland waters, and social surroundings, and recommended that the proposal may be implemented subject to it being carried out in accordance with the recommended conditions and procedures set out in Appendix A of Report 1714.

The majority of appeals against the EPA's report expressed the view that the proposal alignment is not environmentally acceptable. The concerns raised covered a broad range of topics relating to terrestrial and aquatic fauna, flora and vegetation, inland waters and water quality, social connectivity, amenity and heritage, terrestrial environmental quality and soils, climate change and greenhouse gas emissions, economic and other factors, and the adequacy of the recommended conditions.

Decision

On the information before the Minister, it was clear that the implementation of this proposal will have a long term and ongoing impact on the local environment, particularly in Gelorup. This is reflected in the severance of linkages between existing areas of habitat important for threatened fauna in addition to the direct loss of the habitat where the road is to be constructed.

The proposal will also have adverse impacts to the amenity of the local area, both visually and from noise, as well as cause disruption to social connectivity and result in the loss of significant trees.

In its assessment of the proposal, the EPA considered that the proposal would not be inconsistent with its objectives provided certain conditions are met. This includes requirements for the establishment of significant areas of new habitat for a number of threatened species, including the critically endangered western ringtail possum and endangered Carnaby's cockatoo.

Overall, the Minister accepted the EPA's advice and did not consider it necessary for the proposal to be reassessed. The question as to whether the proposal should be implemented is a matter for the Minister and the key decision-making authorities under section 45 of the *Environmental Protection Act 1986* (EP Act). The acceptability of this proposal in the context of its environmental risks and other matters such as social and economic considerations will be taken into account through that process. While not considered to be part of the referred proposal by the EPA, the decision-making process will consider the relative merits of alternate options, and in that regard, the Minister thanked appellants and the Appeals Convenor for providing a comparison of impacts between two of the options.

Should the proposal be approved for implementation, the Minister agreed with the Appeals Convenor that some changes should be made to the EPA's recommended conditions to minimise the impacts as far as possible and the Minister adopted the recommendation as described in her report.

It follows that the Minister allowed the appeals to the extent that the conditions are amended as set out in this decision and the Appeals Convenor's report. As the Minister noted, the final decision on whether or not the proposal should be implemented will be made by decision-makers in due course and will be published at that time.

The full reasons for the Minister's decision follow.

Terrestrial fauna

This ground of appeal combined concerns raised in respect to the EPA's assessment of impacts to multiple species of fauna, including conservation-significant species western ringtail possum (critically endangered), three species of black cockatoos (endangered and vulnerable), black-stripe minnow (endangered), south-western brush-tailed phascogale (conservation dependent), as well as multiple non-threatened species.

The Minister noted the uncertainty around the full recovery of the Gelorup population of western ringtail possum in 10 to 15 years. This was recognised by the EPA, the Department of Biodiversity, Conservation and Attractions (DBCA), and was raised in a number of the appeals.

In short, it appears that the implementation of this proposal will permanently remove around 61 ha of western ringtail possum habitat and sever the links between existing vegetation that is important for the species and other threatened fauna. While the EPA has recommended conditions be applied to the proposal to require the proponent to monitor to confirm the population of the surrounding areas returns to pre-clearing levels in 10 to 15 years, it is accepted that up to 72 individuals will be lost from the Gelorup area due to the permanent loss of habitat.

The EPA recommended two things to address this impact: firstly, that fragmentation effects be monitored (including for age, sex ratios and genetics) for a minimum period of 15 years post-construction, and that if the population not return to pre-disturbance levels, a further 'contingency offset' be required to counterbalance this additional significant residual impact. Secondly, the EPA recommended offsets for the loss of the habitat that will lead to the displacement of up to 72 individuals. These offsets include acquisition of existing habitat and revegetation at a number of sites, including land within the Tuart Forest National Park/Ludlow-Tuart State Forest No.2. These offsets also double as offsets for the south-western brush-tailed phascogale.

The Minister considered the Appeals Convenor's advice in relation to western ringtail possum and found that the EPA's assessment was generally acceptable. This includes consideration of the revised offset calculations undertaken that suggest the offsets proposed (while of lesser value than suggested by the proponent's analysis) are nonetheless of a scale that is acceptable.

The EPA also identified significant residual impacts to about 61 ha of foraging and breeding habitat for three threatened species of black cockatoos. Similar to western ringtail possum, the EPA recommended that the proponent be required to offset these impacts through revegetation and acquisition of existing native vegetation.

The Appeals Convenor undertook a fresh calculation of the offsets accepted by the EPA. By this analysis, the Appeals Convenor found that the proponent's offset for black cockatoos is insufficient to counterbalance the residual impacts. To address this, the Appeals Convenor determined that the minimum area to be revegetated as black cockatoo habitat within the Tuart National Park should be increased from 50 ha to a minimum of 75.3 ha. The Minister concurred with this recalculation and amended the conditions accordingly.

On the robustness of the offsets, and the criteria against which they will be assessed, the Minister amended condition 9 to clarify that the criteria to be achieved is that reflected in the offset calculations as the future quality for each offset area. This change will ensure the proponent is responsible for achieving the future quality scores for each offset area. In this regard, the relevant future quality scores will be those identified in Appendix 3 of the Appeals Convenor's report.

In relation to other fauna values, including the black-stripe minnow, non-threatened fauna, impacts from light and noise, and other considerations set out in the Appeals Convenor's report, the Minister determined that the EPA's assessment was generally appropriate.

It follows that the Minister allowed this ground of appeal by amending the EPA's recommended conditions in the manner recommended by the Appeals Convenor.

Flora and vegetation

The proposal involves the clearing of 71.5 ha of native vegetation. Concerns raised by appellants in respect to this clearing included concerns with the EPA's assessment of impacts to multiple flora and vegetation values including cumulative impacts to State-listed priority/Commonwealth-listed threatened ecological communities, orchids, mycorrhizal networks and non-threatened flora.

Key concerns related to the cumulative impacts of clearing of vegetation that is representative of the 'Banksia Woodlands of the Swan Coastal Plain' (Banksia Woodlands) ecological community, the 'Tuart (*Eucalyptus gomphocephala*) woodlands and forests of the Swan Coastal Plain' (Tuart Woodlands) ecological community, and the 'Southern Swan Coastal Plain *Eucalyptus gomphocephala* - *Agonis flexuosa* woodlands (floristic community type 25)' (Tuart-Peppermint Woodlands) ecological community.

The Appeals Convenor advised that the Banksia Woodlands ecological community is listed as a priority ecological community (PEC) by the State and as a component of the 'endangered' threatened ecological community (TEC) of the same name under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act); the Tuart Woodlands ecological community is listed as a PEC by the State and as a component of the 'critically endangered' TEC of the same name under the EPBC Act; and the Tuart-Peppermint Woodlands ecological community is listed as a PEC by the State and (for the purpose of this proposal) a component of the 'critically endangered' Tuart Woodlands TEC.

The Minister was advised that the proposal will result in the removal of 23.4 ha of the Banksia Woodlands PEC, about half of which is in 'good' or better condition, and a combined total of 4.5 ha of the Tuart Woodlands PEC and Tuart-Peppermint Woodlands PEC, about a fifth of which is in 'good' or better condition.

In its assessment of this issue, the EPA found that the clearing of these PECs to be a significant residual impact of the proposal. To address this impact, the EPA recommended that offsets be applied, comprising the acquisition and management of a total of about 111 ha of remnant vegetation representative of the impacted PECs (and largely overlapping the offsets for threatened fauna).

The Appeals Convenor's report examines the adequacy of the proposed offsets in detail and (similar to her findings on the fauna offsets considered above) has concluded that the offsets should be increased to better reflect the values of the area to be cleared and more conservative assumptions. In the case of the Banksia Woodlands PEC, this means the minimum extent of area to receive offset measures to be increased from 92 ha to 126.9 ha of acquisition and management; while for the combined Tuart Woodlands PEC and Tuart-Peppermint Woodlands PEC, it be increased to include 7.2 ha of revegetation.

The Minister believed this approach was sound and adopted the Appeals Convenor's recommendation in respect to those offsets accordingly.

In relation to other concerns raised in respect to this ground of appeal, including impacts to orchids, mycorrhizal networks, ecological linkages, and other values set out in the Appeals Convenor's report, the Minister believed the EPA's assessment was generally appropriate.

From the above, the Minister allowed this ground of appeal by modifying the EPA's recommended conditions as described above.

Inland waters

By this ground of appeal, appellants raised concerns that the EPA inappropriately based its recommendations on desktop information in the absence of current modelling and site-specific geotechnical and other investigations (groundwater abstraction, flooding, acid sulfate soils, hydrology, impacts on groundwater dependent ecosystems). Without sufficient assessment and appropriate conditions, appellants submitted that the proposal poses unacceptable risks to inland waters, including Five Mile Brook. Concerns were also raised in respect to impacts to surface water.

The Minister considered the EPA and Appeals Convenor's advice in response to this ground of the appeals. From this, it was apparent that the implementation of the proposal will impact on a total of 43.4 ha of geomorphic wetlands (including 0.2 ha 'conservation' category and 1.4 ha 'resource enhanced'), may impact on hydrological regimes and water quality in adjacent wetlands, and may have impacts associated with groundwater abstraction.

To address these impacts, the EPA recommended condition 2 requiring pre-disturbance monitoring of hydrological regimes and baseline conditions, and monitoring of these elements during and post-construction, with reporting requirements, to meet the objective that there are no project-attributable impacts to the hydrological regime and water quality of 'conservation' category and 'resource enhanced' wetlands, Five Mile Brook or black-stripe minnow habitat.

Overall, the Minister agreed with the Appeals Convenor that the EPA's assessment of this factor was acceptable and that no changes are required to the recommended conditions. The Minister therefore dismissed this ground of appeal.

Social surroundings

Appellants raised a number of objections to the EPA's assessment of impacts on social surroundings, including dividing the Gelorup community and loss of social connectivity, permanently change landscape character and amenity, and would cause ongoing and severe noise, light and air pollution (leading to contamination of drinking water and risks to human health). Appellants also submitted that the proposal would impact areas of Aboriginal cultural significance and would impact trees with significant cultural and heritage value.

The EPA relevantly found that the implementation of the proposal will have impacts in relation to social and visual amenity (including connectivity), noise, two community-significant trees, and Aboriginal heritage places.

The EPA recommended conditions 7 and 8 to address these impacts, essentially requiring the proponent to define outdoor noise management targets and actions to meet these (including monitoring and contingency actions if not met), as well as implementing design features to minimise noise, and to prepare an Amenity Management Plan that includes the outcomes of consultation with the community and relevant stakeholders on amenity infrastructure. In this regard, the Minister was advised that the detailed design for the proposal is not finalised at this time.

In addition to the above, the EPA also found that the proposal might potentially impact on another community-significant tree and an Aboriginal cultural tree located in near proximity to the proposed road. The EPA considered this potential impact could be addressed through an outcome-based objective that there are to be no project-attributable impacts on these trees.

The construction and operation of the road will have ongoing impacts and will divide the Gelorup community. However, the Minister was satisfied that the impacts were appropriately characterised by the EPA and certain mitigations are proposed to reduce the level of impact.

This includes two additional underpasses and lowering the height of the road at the Yalinda Drive bridge to reduce amenity impacts.

The Minister therefore concluded that the EPA was justified in concluding that the proposal (with the additional mitigations) is consistent with its objective for social surroundings. The Minister therefore dismissed this ground of the appeals.

As noted with respect to other appeal grounds, the Minister's appeal decision is not a final decision on whether or not the proposal may be approved – that decision will be made by the key decision-making authorities and the Minister under section 45 of the EP Act in due course.

Land degradation

A number of appellants raised concern that the EPA failed to consider the effects of the proposal in relation to land degradation, including acid sulfate soils, contamination and erosion.

While the EPA did not identify terrestrial environmental quality to be a key environmental factor for this proposal, the EPA recognised the potential for impacts from acid sulfate soils, encountering contaminated sites, contamination from proposal activities, and land degradation following clearing. The EPA concluded that the potential impacts to terrestrial environmental quality can be managed through the proponent's mitigation measures and are therefore not significant.

In this regard, the Minister understood that the proponent has committed to further site specific geotechnical and acid sulfate soil investigations following detailed design, and proposes to prepare a number of plans and procedures as part of a Construction Environmental Management Plan to address the management of hazardous materials, topsoil health, acid sulfate soils and dewatering activities. In addition the EPA noted that impacts from acid sulfate soils can be considered under Department of Water and Environmental Regulation guidance *Treatment and management of soil and water in acid sulfate soil landscapes* (DWER, 2015).

On the information available to him, the Minister considered the risks raised by this ground of appeal can be adequately managed through the implementation of the proponent's proposed mitigation measures. It follows that the Minister dismissed this ground of appeal.

Greenhouse gas emissions and climate change

Some appellants considered that the EPA did not properly assess the impacts from greenhouse gas (GHG) emissions associated with the proposal, or the effects of climate change.

While the EPA did not identify greenhouse gas emissions as a key environmental factor, it nonetheless considered them as part of the preliminary assessment following referral.

On the basis of the information provided by the proponent, total scope 1 greenhouse gas emissions for the proposal were identified as being 42,251 tonnes of tonnes of carbon dioxide equivalent (tCO₂-e) over three years during construction and 666 tCO₂-e for operational maintenance. The proponent also modelled scope 3 emissions as being 91,638 tCO₂-e over three years during construction. In relation to scope 3 emissions from the use of the road by vehicles, the proponent determined that annual emissions in 2041 would be approximately 2,100 tCO₂-e.

In relation to climate change generally, the Minister accepted the EPA's advice that it considered the specific threat climate change presents for fauna, flora and vegetation and inland waters within the context of its assessment of those factors.

It is widely recognised that natural ecosystems are undergoing change from exposure to multiple human disturbances. It is recognised that multiple threats or disturbances (in this case climate change and fragmentation) can interact to result in cumulative impact through substantial changes at the species and remnant-level.

Noting the above, while the Minister agreed that the GHG emissions of this proposal are not of a scale that warranted specific consideration by the EPA, they are emissions that will need to be reflected in savings elsewhere in the economy to reflect the State's commitment to net zero emissions by 2050. As for other recent proposals concerning cumulative contributions to GHG emissions, these are matters that are appropriately for consideration by key decision-makers under section 45 of the EP Act.

Holistic assessment

By this ground of appeal a number of appellants submitted that the EPA did not adequately consider the interrelated impacts of the proposal. For example, one appellant submitted that the EPA ought to have assessed the impacts associated with the extraction of basic raw materials required to facilitate construction.

The EPA's report sets out how it considered the holistic impacts of the proposal across the four key environmental factors. The EPA's conclusion that the combined impacts of the proposal can be managed through the application of the proponent's mitigation measures, other statutory processes, and the recommended conditions, is reasonable and justified.

In relation to basic raw materials, the Minister agreed with the Appeals Convenor that while quarries are not regulated under Part V of the EP Act in the manner described by the EPA, the requirement for decision-making authorities to refer a significant proposal to the EPA (and for the EPA to call-in a proposal if it is not referred) provides sufficient assurance that areas of basic raw material extraction will be considered by the EPA where significant. In addition, proposals involving the clearing of native vegetation for quarrying also generally require a clearing permit.

Based on the above, the Minister considered the EPA's holistic assessment was appropriate in this case and dismissed this ground of the appeal.

Other appeal issues

A number of other grounds of appeal were raised in objection to the EPA's report and recommendations. These include how the EPA had regard to the principles of the EP Act, the planning context, previous or related decisions, and economic considerations.

The Minister considered the Appeals Convenor's advice in respect to these appeal grounds and agreed with her recommendations on each of those grounds. The appeals were determined accordingly.

Matters which were raised by appellants but which were considered not to be directly relevant to the appeal or to be outside its scope (and therefore not for determination) are outlined in the Appeals Convenor's report.

Next steps

As noted above, the final decision on whether or not this proposal may be implemented is made by the Minister and key decision-making authorities. This process provides a mechanism to consider the environment, social and other considerations relevant to the proposal. As foreshadowed above, this process also provides an opportunity to consider alternative alignments that the EPA considered were outside the scope of the referral.

Once a decision is made, it will be published on the EPA's website.

Acknowledgement

Finally, the Minister wished to thank appellants for bringing their concerns to his attention and for cooperating with the Appeals Convenor during the appeal investigation. The Minister particularly wished to acknowledge those appellants who took the time to meet with the Appeals Convenor and her officers in Gelorup, Bunbury, Perth and online. There were a large number of appeals raising significant and complex issues which were aided by the constructive approach adopted by appellants.

Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

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